

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on: 18.02.2010*
Judgment Delivered on: 24.02.2010

+ **CS(OS) No.2839/2000 & I.A. No.3046/2003**

AJAY KOHLI Plaintiff
Through: Mr. Harish Malhotra, Senior Advocate
with Mr. Rajinder Aggarwal, Advocate.

VERSUS

M/S ANSAL PROPERTIES & INDUSTRIES LTD. Defendant
Through: Mr. Rohit Kr. Aggarwal, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

INDERMEET KAUR, J.

1. Plaintiff Ajay Kohli, sole proprietor of M/s Swaran Kosh has filed the present suit for recovery of Rs.58,07,688/- of which Rs.39,19,200/- is the principal amount and the balance is the interest claimed @ 18% per annum.

2. Plaintiff is a liaison and property consultant working under the name and style of M/s Swaran Kosh. Defendant M/s Ansal Properties & Industries Ltd. is a company incorporated under the Companies Act. Amongst other business, defendant company has also constructed the shopping complex known as Ansal Plaza, Andrews Ganj, New Delhi.

3. Defendant for selling different spaces in the said complex called upon the plaintiff to provide service for finding customers. Agreed commission @ 2.5% was to be paid. Oral discussion ensued between the parties.

4. Plaintiff negotiated a deal of 10,000 sq.ft. area with the Jammu & Kashmir Bank Ltd.(hereinafter referred to as the Bank) at Ansal Plaza Hudco Complex, Andrews Ganj, New Delhi. With his efforts he was able to conclude the deal for Rs.12 crores. The efforts of the plaintiff were recognized by the defendant in their letter dated 3.10.1997. Deal was finalized in December, 1997 itself, yet paper formalities were not completed. On 19.12.1997 this was conveyed by a letter sent by the defendant to the plaintiff appointing him as his agent for future deals upto 31.12.1998.

5. On 24.1.1998 the sale agreement between the Bank and the defendant was finalized which was through the efforts of

plaintiff. The deal was for Rs.12 crores on which 2.5% commission payable to the plaintiff was Rs.30 lacs.

6. Negotiations for another additional space for 3,064 sq. ft adjacent to this place were also finalized through the efforts of the plaintiff and the Bank Ltd agreed to purchase this extra space from the defendant for a total sum of Rs.3,67,68,000/- which had culminated in the sale agreement dated 23.9.1998. Commission @ 2.5% was payable on this deal as well.

7. The total commission to be payable to the plaintiff works out to Rs.39,19,200/-. The defendant has failed to honour his commitment and has not paid the aforestated amount due and receivable by the plaintiff. Principal amount is Rs.39,19,200/-. Interest @ 18% per annum on the aforestated amount is Rs.18,88,488/-. Total amount of Rs.58,07,688/- is due and payable by the defendant.

8. In the written statement, this position is refuted by the defendant. It is not denied that a deal had taken place between the Bank and the defendant for 10,000 sq. ft. area followed by a further additional space sold by defendant to the Bank vide aforestated sale agreements dated 24.1.1998 and 23.9.1998. The sale figures of the two agreements i.e. the first sale

agreements for Rs.12 crores and the second sale agreement for Rs.3,67,68,000/- are not in dispute.

9. Defence as set up by the defendant is that there was no involvement of the plaintiff in these deals whatsoever; it was a direct deal between the defendant and the Bank. No efforts were made by the plaintiff. The deal was concluded on 08.12.1997 which was prior in time to the appointment of the plaintiff as an agent of the defendant. Plaintiff had been appointed as an agent of the defendant on 19.12.1997 when this deal was already over. The plaintiff at all times represented that he is an agent of the Bank. In these circumstances, the plaintiff is not entitled to any amount from the defendant.

10. Replication was filed reiterating the averments made in the plaint while refuting the submissions and the defence as set up by the defendant.

11. On the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff negotiated as broker for an on behalf of the defendant for the sale of 10,000 sq. ft. area on the second floor of Ansal Plaza Complex with the Jammu & Kashmir Bank Ltd.? OPP

2. Whether the deal of the defendant with the said Jammu & Kashmir Bank Ltd., in respect of 10,000 sq. ft. area of the said Ansal Plaza Complex was finalized for a total consideration of Rs.12,00,00,000/- i.e. Rs.12,000/- per sq. ft. due to the efforts of the plaintiff? OPP
3. Whether the plaintiff also rendered his services as broker in respect of deal of 3064 sq. ft. additional area adjacent to the place already sold to the Bank due to the efforts of the plaintiff and the same was finalized for a total sum of Rs.3,67,68,000/- due to the efforts of the plaintiff? OPP
4. Whether the plaintiff is entitled to commission at the agreed rate of 2.5 % on the aforesaid two sales? OPP
5. Whether the plaintiff is entitled to interest on the due amount? If so, at what rate and for what period ? OPP
6. Whether the transaction, between the defendant and Jammu & Kashmir Bank for transfer of 10,000 sq. ft. and 3,064 sq. ft of area in the Ansal Plaza Complex concluded without the assistance of the plaintiff? OPD

7. Relief.

12. The plaintiff Ajay Kohli in support of his case has examined himself as PW-1. Defendant has produced three witnesses in defence. DW-1 Mr. J.K.Srivastva, General Manager (Legal) was admittedly not a part of the sale/purchase department of the defendant company when this deal was finalized. This deal was finalized at the time when Deepak Khanna was the Assistant General Manager (Marketing) at the relevant time; he has been examined as DW-2. Rajesh Saraf, Senior General Manager of the Jammu and Kashmir Bank has been examined as DW-3 to substantiate the defence set up by the defendant that the deal was a direct deal between the defendant and the Bank in which the plaintiff had no role to play.

13. Arguments have been heard. Record has been perused. Findings on the issues are as follows:-

14. **ISSUE NOS.1 TO 4 & 6:**

All the aforesaid issues will be decided by a common discussion as they overlap each other.

15. Case of the plaintiff is that he had negotiated a deal of 10,000 sq.ft. area on the second floor of the Ansal Plaza between the Jammu & Kashmir Bank Ltd. and the defendant. This deal

had culminated in the sale agreement dated 24.1.1998 Ex.PW-1/5(D-1) which was for a sum of Rs.12 crores. The further case of the plaintiff is that additional space was also required by the Bank which due to the efforts of the plaintiff culminated in the second agreement to sell dated 23.9.1998 Ex.PW-1/6 (D-2) for a sum of Rs.3,67,68,000/-. Further case of the plaintiff is that he was entitled to 2.5% commission on the said deal which had culminated through his efforts.

16. These factual averments are not in dispute. It is not in dispute that the aforestated sale agreements had been entered into between the defendant and the Bank for the aforestated amounts. It is also not disputed that brokerage of 2.5% was to be paid to the broker through whose efforts this deal had been finalized.

17. Case as set up by the defendant is that the plaintiff is not entitled to the brokerage as claimed by him i.e. a sum of Rs.30,00,000/- for the first deal and a sum of Rs.9,19,200/- for the second deals, these deals were direct deals between the defendant and the Bank and this is prima facie borne out by the evidence of his witnesses as also by his supporting documents.

18. Ex.PW-1/1 is a letter dated 3.10.1997 written by the defendant through DW-2 his Assistant General Manager (Sales)

Deepak Khanna to the plaintiff; this is an admitted document.

DW-2 Deepak Khanna has admitted that he had sent this communication dated 3.10.1997. This letter reads as follows: -

“October 03, 1997

Mr. Ajay Kohli
J-4, Kailash Colony
New Delhi – 110048

Dear Sir,

This has reference to our discussions and your letter dated 31.10.1997 regarding marketing efforts towards sale of approximate 10,000 sq. ft. offices area to J & K Bank Ltd.

We are pleased to learn that you are vigorously following up with your client and likely to finalize the deal in near future. We confirm that commission as per the company policy shall be payable to you on finalization of the deal.

Please note that this offer is valid till 31.12.1997.

Thanking you,

Yours sincerely
For ANSAL PROPERTIES & INDUSTRIES LTD.

(DEEPAK KHANNA)
ASSISTANT GENERAL MANAGER(SALES)”

19. After making a reference to the discussion relating to sale of 10,000 sq.ft. of office area to the Bank the defendant has through this communication confirmed and recognized that it was through vigorous and persistent efforts of the plaintiff which had led to the negotiations of deal of 10,000 sq. ft. office

area between the defendant and the Bank and with these continuous efforts the deal was likely to culminate in the near future.

20. Ex.PW-1/2 is a letter dated 18.12.1997 addressed by the plaintiff to the defendant. It reads as follows: -

“The Manager
Ansal Properties of Industries Ltd.
116, Kasturba Gandhi Marg
New Delhi

18.12.1997

Sub:- Marketing Consultancy for Ansal Plaza Andrews Gang, New Delhi

This is in reference to your letter dated 3rd October, 1997 regarding appointing us as marketing consultants towards sale of approximately 10,000 sq. ft. office area to Jammu and Kashmir Bank Ltd.

We have successfully been able to sell 10,000 sq. ft. area of Ansal Plaza to the above mentioned Bank subject to completion to all formalities and legal documentation. We wish to congratulate your esteemed organization on signing the consent documents. Do let us know if any further assistance is required.

Further we wish to be appointed as your authorized marketing agent/brokers to market Ansal properties in new future to Jammu & Kashmir Bank and other renowned clients. Kindly find enclosed the application form for the same.

Looking forward to long terms joint association together.

Thanking you
Yours sincerely,
(Ajay Kohli)
AUTHORISED SIGNATORY”

21. This communication makes reference to the earlier letter dated 3.10.1997 Ex.PW-1/1. It further states that the deal of 10,000 sq. ft. of the office area has been successfully completed although formalities and the legal documentation is yet to take place; plaintiff has congratulated the defendant for the said purpose; further this letter states that the plaintiff wishes to be appointed as a marketing agent/broker for Ansal Plaza in the future. This letter has an endorsement of receipt; it has been received on 19.12.1997 in the office of the defendant. Along with this letter the agent's profile Ex.PW-1/3 has been appended.

22. DW-1 J.K. Srivastva, General Manager (Legal) of defendant has on oath deposed that the plaintiff had approached the defendant for appointment as an agent vide his application dated 18.12.1997 which was received by the defendant on 19.12.1997. This is the same letter and thus Ex.PW-1/2 containing the plaintiff's profile Ex.PW-1/3 stands admitted by DW-1.

23. Ex.PW-1/4 is a letter dated 19.12.1997 written by the defendant through DW-2 Deepak Khanna to the plaintiff. This communication makes reference to discussions between the parties; vide this communication the plaintiff had been directed to collect his allotment letter as appointment as an agent of the defendant on the terms and conditions contained therein which arrangement was to continue up to 31.12.1998 and to be reviewed thereafter. This document is admitted.

24. The aforementioned documents clearly depict and decipher that prior to 3.10.1997 there were oral discussions between the plaintiff and DW-2 i.e. the Assistant General Manager (Sales) of the defendant company with regard to the marketing efforts of the plaintiff for 10,000 sq. ft. of office area to be sold to the Bank. Ex.PW-1/1 has categorically recited that vigorous efforts had been made by the plaintiff which were likely to lead to the finalization of the deal. It further recites that commission will be payable on the finalization of the deal as per the company policy. It is not in dispute that the company policy is that on such like sale transactions relating to a sale of land in Ansal Plaza commission payable would be 2.5%. This has been admitted by DW-2 Deepak Khanna on oath; he has admitted that

the company has been paying commission @ 2.5% of the sale value for sale transactions at Ansal Plaza.

25. DW-2 has also admitted that he had first met the plaintiff in August/September 1997 in his office; plaintiff Mr.Ajay Kohli had represented himself to be a property broker/real estate consultant; he had met him regarding the proposal for office area in Ansal Plaza for the Jammu and Kashmir Bank; he has further admitted that he was responsible for the sale and lease/renting of the commercial properties of the company and in that capacity he was interacting, dealing and concluding such deals for which as per the policy of the company commission was payable.

26. Defence of the defendant is that the deal stood completed on 8.12.1997. Attention has been drawn to his documentary evidence proved through testimony of his third witness DW-3, who is the Senior General Manager of the Jammu & Kashmir Bank. DW-3 has on oath deposed that this was a direct deal between the defendant and the Jammu and Kashmir Bank as per the record of the bank. He has deposed that an advertisement has been effected on 15.9.1997 in the Times of India for requirement of space for the Zonal Office. Ex.DW-3/1 is a letter dated 18.9.1997 addressed by the executive marketing manager

of the defendant to the Jammu & Kashmir Bank Ltd. Attention has been drawn to this communication which makes reference to the office space area required by the Jammu & Kashmir Bank. Vide this communication dated 18.9.1997 the representatives of the Jammu & Kashmir Bank Ltd. had been invited to visit Ansal Plaza and to see the progress development there. DW-3/3 is another communication dated 28.11.1997 addressed by the defendant to the General Manager of the Bank. This makes reference to the purchase of 10,000 sq. ft. space by the Bank in Ansal Plaza; request has been made by the defendant to enhance the price from Rs.12,000/- per sq. ft. to Rs.13,000/- per sq. ft. Ex.DW-3/5 is another letter dated 08.12.1997. This makes reference to an earlier communication dated 4.12.1997 between the parties. Defendant by this letter has agreed to sell 10,000 sq. ft. of space at Ansal Plaza to the Bank @ Rs.12,000/- sq. ft. and certain documents as per the request of the Bank had been forwarded to it. Ex.DW-3/6 is yet another letter of the Bank stating that no broker has been engaged by them for the purchase of the premises of an area of 13064 sq.ft. at Ansal Plaza Complex.

27. It is submitted that in neither of these communications there is any reference of plaintiff or of any efforts made by him;

it was a direct one to one deal between the defendant and the Bank. These documents have been relied upon by the defendant to ward off its liability.

28. DW-1 was admittedly not working in the department of sale and purchase of properties of the defendant company. He was in the Legal Department. In his cross-examination, he has admitted that there is a separate department for sale and purchase of the immovable properties and Mr. Deepak Khanna was looking after the said department; to the various questions put to him he has given evasive replies; not knowing the facts of the case as not working in the concerned department of the company. Admittedly, the person examining this deal was DW-2.

29. DW-2 has on oath admitted that the plaintiff had met him in September 1997 stating that he was engaged in the business of sale, purchase and letting out real estate and he was an agent/broker of the Bank. DW-2 has reiterated the stand of the defendant that the deal between the defendant company and Bank was a direct deal and not through the plaintiff.

30. In his cross-examination DW-2 has stated that the Chairman of the Bank visited Ansal Plaza to see the development progress in July 1997 and after seeing the site they had finalized this deal. This is a false averment of DW-2 as is apparent from

the document of the defendant himself. Ex.DW-3/1 is a letter dated 18.9.1997 inviting the Bank to make a first appraisal of the development at Ansal Plaza. This communication is dated 18.9.1997; as such averment of DW-2 on oath that Chairman of the Bank had visited the site in July 1997 is prima facie incorrect. The fact that this version is false is further fortified by the next admission of DW-2 who has stated that an advertisement in the Times of India given by the Bank requesting for space was made sometime in April and May 1997. DW-3 has stated to the contrary. On oath he has stated that an advertisement for requirement of office space for the Zonal Office was given in the Times of India by the Bank on 15.9.1997.

31. DW-2 has been specifically queried about the letter dated 18.12.1997 submitted by the plaintiff to the defendant along with his profile Ex.PW-1/3. To both the queries he had again given evasive and non-committal answers stating that he does not know if the plaintiff had addressed any such letter dated 18.12.1997 along with the profile of the plaintiff. This version of DW-2 is again incorrect as DW-1 in his examination-in-chief has admitted that the plaintiff had approached the defendant vide his application dated 18.12.1997 received by the defendant on 19.12.1997 for appointment as an agent. DW-2 was well aware

of this fact yet deliberately on oath he has not answered these specific queries; he has made every effort to conceal facts and not bring out the true picture; he is playing hide and seek with the court.

32. This has been fortified by the admitted letter dated 19.12.1997 issued by DW-2 himself to the plaintiff appointing him as his agent. This appointment is obviously a corollary and a consequence of the profile which the plaintiff had sent of himself along with his letter Ex.PW-1/2 requesting for his appointment as an agent. DW-2 is not a truthful witness.

33. Plaintiff has on oath reiterated this deal for 10,000 sq. ft of was finalized in December 1997 yet paper formalities had to take time. PW-1 at the request of the defendant had sent the formal application for appointment as an agent which he had sent vide his letter dated 18.12.1997 and received by the defendant on 19.12.1997. Ex.PW-1/4 is the letter of the defendant dated 19.12.1997 appointing the plaintiff as his agent for future works. PW-1 has further deposed that at the time when this agreement was finalized, negotiations started for another additional space of 3,064 sq. ft adjacent to this place which materialized and was sold to the Bank vide agreement dated 23.9.1998 which was through the efforts of the plaintiff.

No cross-examination has been effected of this witness on this score at all; even otherwise, as per the case of the defendant also, plaintiff had been appointed as agent of the defendant on 19.12.1997. In his further cross-examination, PW-1 has detailed the time place and location where for the first time he had met DW-2 Mr.Deepak Khanna General Manager (Marketing) of the defendant.

34. Emphasis has been made by the defendant to his submission that the plaintiff was an agent of the Bank and this is clear from Ex.PW-1/1 where the defendant has referred to the Bank as “your client”; the plaintiff thus being an agent and the broker of the defendant. This version is again distorted by the document of the defendant himself. Ex.DW-3/6 clearly states that the Bank had not engaged any broker for his office space of 13,064 sq. ft. purchased by them. DW-3 in his cross-examination has also stated that as per the RBI guidelines the bank cannot appoint any broker. Further cross-examination of DW-3 has reflected that the plaintiff is aware of the entire constitution of the Bank i.e. with that part of their team who were negotiating the purchase of this office space at Ansal Plaza on behalf of the Bank. Names of Shamas Farooq, Faizali, Tafazal Hussain, Abdul Majid Mir and Mr.Ajit Singh have been

highlighted to show that the plaintiff was in every manner connected with the deal and the negotiations which were going on between the defendant and the Bank.

35. Ex.PW-1/5(D-1) and Ex.PW-1/6(D-2) are the two agreements dated 24.1.1998 and 23.9.1998 respectively. The first deal was for the sale of 10,000 sq. ft. office space in Ansal Plaza and the second deal was for the sale of additional office space of 3,064 sq. ft.. The first deal had been struck for Rs.12 crores and the second deal was struck for Rs.3,67,68,000/-; Ex.D-1 has been signed by Mr.Tafazal Hussain and Ex.D-2 has been signed by Mr.Ajit Singh on behalf of the defendant company.

36. Admittedly DW-2 has first met the plaintiff in August 1997. On 15.9.1997 an advertisement has been effected in the Times of India by the Bank requesting for office area for their Zonal Office. Ex.DW-3/A dated 18.9.1997 exchanged between the defendant and the Bank was the offer of the Bank in this advertisement. Ex.PW-1/1 dated 3.10.1997 recognized the vigorous efforts of the plaintiff in the maturation of this deal of 10,000 sq. ft. of space to be sold by the defendant to the Bank. This letter also recited that the deal is likely to be completed in the near future. On 18.12.1997 Ex.PW-1/2 the plaintiff sent his

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profile along with his letter requesting for his appointment as an agent for future deals. This letter has clear reference to the letter dated 3.10.1997 regarding the sale of 10,000 sq. ft. office area to the Bank; it further categorically congratulated the defendant on the successful completion of this deal. These documents makes it amply clear that it was at the request of the defendant that the plaintiff had sent Ex.PW-1/2 appending his agent profile Ex.PW-1/3 for his appointment as an agent of the defendant for future deals; he had already successfully completed the deal of 10,000 sq. ft office space to the Bank. In terms thereof the appointment letter was given to the plaintiff on 19.12.1997 itself vide Ex.PW-1/4. Deal for 10,000 sq. ft. of space had been completed in early December 1997. This is evident from Ex.DW-3/5 dated 8.12.1997 which is a communication exchanged between the defendant and the General Manager of the Bank. Mere fact that the name of the plaintiff does not find mention therein or his efforts has not been recognized in this letter do not make out a defence for the defendant to shrug off his liability. Defendant had already recognized the efforts of the plaintiff in the completion of this sale agreement. DW-2 knew the plaintiff only in his capacity as an agent/broker. He could not have been an agent of the Bank

as there was a prohibition under the RBI guidelines for a broker to be appointed by the bank. The second deal of additional space of 3,064 sq.ft. was negotiated thereafter; i.e. after 19.12.1997, after the plaintiff had become the agent of the defendant. This is clear from Ex.PW-1/2 dated 18.12.1997 wherein the plaintiff has congratulated the defendant on the successful completion of the deal of 10,000 sq.ft. area only.

37. Admittedly, apart from the plaintiff there is no other broker in this deal; it is also not the case of the defendant that he had paid brokerage to some other person. Defence of the defendant that this was a direct deal is a false defence. DW-2 has not come to the court with clean hands. He is a primary witness of the defendant. DW-3 has also established that the bank as per RBI guidelines was not permitted to engage the service of a broker. Replies of DW-3 are also evasive; he was not even in a position to identify the members of the team constituted by the Bank to negotiate this deal with the defendant; yet the plaintiff knew all their names. This also reinforces the belief of the court that it was through the efforts of the plaintiff that the deal between the defendant and the Bank finally got struck. Agreed rate of commission was 2.5% on such like transactions; DW-2 has admitted this. DW-1 is of no help;

he was in the Legal Department and not in the know-how of this deal. Defendant has failed to establish that this was a direct deal between the defendant and Bank. Plaintiff having finalized the deal between the defendant and the Bank he was rightfully entitled to his admitted rate of commission i.e. 2.5% of the sale. Commission payable on the said two transactions at 2.5% would be Rs.30 lacs and Rs.9,19,200/- respectively. Right of the plaintiff to claim this amount is clearly established.

38. In AIR 1928 Bombay 270 Vasanji Moolji vs. Karsondas Tejpal, it had been held that the job of a broker is to find a party who is willing to advance the money to the borrower; once he had put it in the borrower's power to obtain the loan, he had done all that which his appointment necessitated thus entitling him to his commission.

39. Issue nos.1 to 4 & 6 are decided in favour of the plaintiff and against the defendant.

40. **ISSUE NO.5:**

Plaintiff has claimed interest of Rs.18,88,488/- on the principal sum of Rs.39,19,200/- @ 18% per annum calculated from one month after the date of the conclusion of the deal to the date of the filing of the suit. On oath, it is reiterated that the commission has to be released to the plaintiff immediately after

the conclusion of the deal or at the most within one month but the defendant has failed to release this amount to the plaintiff.

41. In *State of J & K vs. Dev Dutt Pandit* (1999) 7 SCC 339 it had been held that under Section 34 of the Code of Civil Procedure interest at a higher rate than 6% can be awarded where the liability in relation to the sum so adjudged had arisen out of a commercial transaction.

42. This being a commercial transaction, the plaintiff is entitled to interest at the aforesaid rate; he is, thus, entitled to the aforesaid interest amount of Rs.18,88,488/-.

43. **RELIEF:**

Suit of the plaintiff is decreed in his favour and against the defendant in the sum of Rs.58,07,688/- with future interest @ 12% per annum to be paid from the date of the decree till realization. Cost is also awarded in favour of the plaintiff. Decree sheet be drawn. All the pending applications are also disposed of. File be consigned to record room.

(INDERMEET KAUR)
JUDGE

February 24, 2010
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